

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PAUL W. BERGRIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Action No. 16-3040 (JLL)

ORDER

IT APPEARING THAT:

1. On December 17, 2018, following what this Court interpreted as a request for a stay from the Government, this Court entered an order directing Petitioner, Paul W. Bergrin, to show cause why this Court should not stay his now pending § 2255 motion until the litigation of his motion for a new trial in his underlying criminal matter is decided. (ECF No. 47). This Court explained the basis for that Order as follows:

District Courts have within their discretion the authority to temporarily stay matters where the facts or background of an individual case so warrant. *See, e.g., Nicholas v. Wyndham Intern., Inc.*, 139 F. App'x 79, 81 (3d Cir. 2005) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment and must weigh the competing interests and maintain an even balance.”)). Thus, “a court may hold one lawsuit in abeyance to abide the outcome of another which may substantially affect it or be dispositive of the issues.” *Bechtel Corp. v. Local 215, Laborers’ Int’l Union of N. Am.*, *AFL-CIO*, 544 F.2d 1207, 1215 (3d Cir. 1976).

Absent objection from Petitioner, this Court is inclined to grant the Government’s request and stay this matter pending the outcome of Petitioner’s Rule 33 motion. As both parties have noted in their briefing, there is considerable overlap between the claims

raised in Petitioner's two motions – many of the grounds for a new trial Petitioner has presented in his Rule 33 motion are also the underpinnings of Petitioner's *Brady* and related claims in his § 2255 motion. Likewise, any decision in Petitioner's favor on the Rule 33 motion would potentially moot the § 2255 motion, while a decision adverse to Petitioner on his new evidence claims could potentially preclude him from relief on his related *Brady* and innocence claims raised in his § 2255 motion. It thus appears that a stay would be warranted in this matter. *Bechtel Corp.*, 544 F.2d at 1215; *Nicholas*, 139 F. App'x at 81.

(*Id.* at ¶ 5-6).

2. In response, Petitioner filed a letter with this Court in which he once again requested the appointment of counsel and objected to a stay because he wishes to pursue his claims, including his innocence claims which are at least in part based on the *Brady* claims raised in both this matter and in his Rule 33 motion “separately and simultaneously.” (ECF No. 51). Petitioner's letter also includes his assertion that he intends to submit further briefing and certifications in this matter based on information he states he obtained through his Rule 33 motion litigation. (*Id.* at 2-3).

3. Turning first to Petitioner's reiteration of his request for counsel, this Court previously denied Petitioner's counsel requests because it would not be in the interests of justice to appoint counsel, as Petitioner had shown through his filings and briefs that he was capable of investigating and presenting his claims in a cogent fashion given his years of experience as a criminal attorney and his personal familiarity with his own case. (*See* ECF No. 9 at 2). Notwithstanding Petitioner's protestations about the nature of his current incarceration – the result of his convictions for very serious offenses – this Court finds that there has been no material change in circumstances that would warrant a different result at this stage of the litigation. Petitioner is not entitled to counsel unless and until this Court determines that an evidentiary hearing is necessary to resolve Petitioner's claims, and Petitioner has shown himself capable of investigating and presenting his

claims through his various and numerous letters and briefs to this Court. This Court ultimately determines that the appointment of counsel would not benefit this case at this time, and thus Petitioner's request for the appointment of counsel is denied. *See Morris v. Baker*, No. 14-6785, 2015 WL 5455651, at *1 (D.N.J. Sept. 15, 2015); *see also Reese v. Fulcomer*, 946 F.2d 247, 263 (3d Cir. 1991), *superseded on other grounds by statute*, 28 U.S.C. § 2254(d); *Shelton v. Hollingsworth*, No. 15-1249, 2015 WL 5116851, at *2 (D.N.J. Aug. 31, 2015). In the event that this Court determines such a hearing is necessary following the conclusion of Petitioner's Rule 33 proceedings, this Court will address the appointment of counsel again at that time.

4. Having considered Petitioner's response to the Court's Order to Show Cause, this Court concludes that a stay is warranted in this matter notwithstanding Petitioner's objection to a stay. Although Petitioner argues that his claims should proceed separately and that his innocence claim is different from his Rule 33 claims, in that same letter Petitioner specifically states that he intends to submit further certifications which arise out of information gleaned from discovery and materials he obtained through his Rule 33 proceedings. Likewise, although Petitioner's alleged innocence claim may not be present in his Rule 33 motion, many of the *Brady* and related claims he raises in his current § 2255 motion directly mirror claims raised in the Rule 33 motion and any decision on those Rule 33 claims – whether in favor or against the interests of Petitioner – would have a direct bearing on the fate of Petitioner's § 2255 motion. It is thus clear that any decision on the Rule 33 motion would substantially affect the outcome of the § 2255 motion – possibly to the extent of being dispositive as to some of Petitioner's § 2255 claims – and neither the interests of justice nor the limited resources of this Court would be well-served by permitting Petitioner to pursue substantially similar claims “separately and simultaneously” as requested by Petitioner.

See Bechtel Corp., 544 F.2d at 1215; *Nicholas*, 139 F. App'x at 81. The Government's request for a stay is therefore granted. This matter shall be stayed until a final decision on Petitioner's Rule 33 motion has been entered, at which time the parties will be given an opportunity to brief the effect of the Rule 33 decision on this § 2255 motion.

IT IS THEREFORE on this 11/4 day of February, 2019,

ORDERED that Petitioner's request for the appointment of counsel (ECF No. 51) is DENIED WITHOUT PREJUDICE; and it is further

ORDERED that this matter shall be STAYED until such time as a final decision has been entered on Petitioner's Rule 33 motion in his underlying criminal matter; and it is further

ORDERED that upon the entry of a final decision on Petitioner's Rule 33 motion, this matter shall be reopened and the parties shall be given an opportunity to address the effect of that final decision on this matter; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order on Petitioner by regular mail and on Respondents electronically, and shall administratively terminate this action without prejudice.



JOSE L. LINARES,
Chief Judge, United States District Court